

(2011) 08 MAD CK 0286

Madras High Court

Case No: Writ Petition No. 12724 of 2011

V. Ramadurai

APPELLANT

Vs

The Joint Director of School
Education (Higher Secondary),
The District Educational Officer,
T.S. Rajagopalan and T.B.
Ramanathan

RESPONDENT

Date of Decision: Aug. 11, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226
- Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 - Section 53, 53A

Hon'ble Judges: P. Jyothimani, J

Bench: Single Bench

Advocate: S. Thirumavalavan, for the Appellant; V.S. Sethuraman, A.A.G. Assisted by N. Srinivasan, Additional Govt. Pleader for Respondents 1 and 2, C. Selvaraj for C.S. Associates for 3rd Respondent and M. Kalyani, for 4th Respondent, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Jyothimani, J.

The brief facts necessary for the disposal of this writ petition are as follows:

1.1. The National High School, Mannargudi, which is presently known as National Higher Secondary School, was founded by M/S.S.Ramadurai Iyer and T.S.Singaravelu Udaiyar in 1899. It appears that there has been some dispute in the Udayar family resulting in a partition suit in O.S. No. 22 of 1924 on the file of the Principal Sub Court, Kumbakonam, wherein a preliminary decree was passed on 25.10.1924, confirming equal rights and interest over the management of the school and properties. It is also stated that final decree was also passed on 26.9.1932, which

includes a scheme for managing the National High School. As per the said scheme, each family was entitled to manage the school by rotation for ten years. Out of the ten years, in respect of the turn of Udayar family, the period was divided among their family members within that period.

1.2. It is stated that T.S.Swaminatha Udayar, the eldest male member of the Udayar family, has continued as Secretary and CorRespondent for the period from 1952 to 1958, of course with the consent of the Iyer's family. It is the case of the Petitioner that after that, in spite of the request of the Iyer family to hand over the charge in respect of the school, the Udayar family has not done so and a dispute was raised before the Court, where a scheme was formulated, which ended in a modification by way of consent between the parties in this Court in C.R.P. No. 152 of 1988. As per the modified scheme, 19/30 shares were granted to Iyer family and 11/30 shares to Udayar family and as per the modified scheme, Iyer family and Udayar family each are entitled to have the administration of the school for three years in rotation.

1.3. It is stated that, accordingly, T.S.Swaminatha Udayar has started his tenure from 1.8.1987. He passed away in the year 1999 and due to his death, there was a dispute as to who in the Udayar family is the eldest male member. It is stated that one T.B.Singaravelu Udayar filed I.A. No. 34 of 2001 on the file of the Principal Sub Court, Kumbakonam claiming that he was entitled to represent the Udayar family in the management of the school. During the pendency of the said application, the applicant - T.B.Singaravelu Udayar also expired and his brother, T.P.Ramanathan, who is the fourth Respondent herein, has been pursuing the said application and the same is still pending.

1.4. Since the dispute among the members of the Udayar family was not settled, the District Educational Officer has directed V.Srinivasan of Iyer family to continue as Secretary and CorRespondent till the settlement of the dispute. Hence, according to the Petitioner, from 16.10.2001 to 15.10.2004, the said V.Srinivasan continued as Secretary and CorRespondent, but that was not questioned by anyone. Then the usual turn of Iyer family has started from 16.10.2004 and therefore, V.Srinivasan continued as Secretary and CorRespondent till his death on 22.11.2005.

1.5. It is stated that the Petitioner, being the eldest male member of Iyer family, has assumed charge as Secretary and CorRespondent and forwarded a proposal to the Joint Director of School Education for his approval. That was rejected by the first Respondent on 9.5.2006 on the ground that several persons were claiming rights over the management. On the basis of a representation made by the third Respondent, who is alleged to be not coming under the lineage of Udayar family, the first Respondent has approved the third Respondent as an educational agency from 1.8.2007 for a period of three years.

1.6. The said order passed by the first Respondent was challenged in W.P. Nos. 17974 of 2006 etc. batch cases. The rival claimants from Udayar family have also

filed writ petitions. By an order dated 29.1.2007, the order passed by the first Respondent was set aside and the matter was remanded to the first Respondent for fresh disposal. Once again the first Respondent has passed an order on 1.8.2007 approving the third Respondent as Secretary and CorRespondent. The copy of the said order was obtained by the Petitioner under Right to Information Act. It was against the said order of the first Respondent passed on remand on 1.8.2007, two writ petitions were filed in W.P. Nos. 34739 and 34740 of 2007 by the Petitioner and after elaborate hearing, the matter was reserved for orders and is yet to be pronounced.

1.7. In the meantime, the period of three years has come to an end on 31.7.2010. Therefore, the Petitioner has requested the third Respondent to hand over the charge to him as per the scheme decree. However, the third Respondent has informed that the first Respondent has approved him as educational agency for another three years. Since copy of such order was not served on the Petitioner, he applied under the Right to Information Act on 2.8.2010 and also sent a requisition letter on 10.8.2010 to the first Respondent, requesting him to furnish a copy of the said order. Since No. reply was sent by the first Respondent, he filed a writ petition in W.P. No. 20997 of 2010, wherein this Court has directed the first Respondent to furnish a copy of the said order.

1.8. On receipt of the order of this Court, the Petitioner has sent the same to the first Respondent on 20.9.2010, followed by a reminder dated 30.9.2010. However, the copy of the order passed by the first Respondent was not served and therefore, the Petitioner had to file a contempt petition on 4.10.2010. It was thereafter, in a postal cover sent on 4.10.2010, the first Respondent has enclosed the copy of the order dated 29.7.2010 passed by him, along with a covering letter dated 1.10.2010. That was challenged by the Petitioner in W.P. No. 23086 of 2010. Again, the said order dated 29.7.2010 was set aside by this Court on the ground that the said order has been passed without notice to the Petitioner and directed the first Respondent to hear the matter afresh and pass orders within three months and till then this Court has directed status quo to be maintained, thereby permitting the third Respondent to continue to be the Secretary and CorRespondent.

1.9. It was against that portion of the order permitting the third Respondent to continue as the Secretary and CorRespondent, the Petitioner filed a writ appeal. When the appeal was in the SR stage, the first Respondent has issued a notice on 19.1.2011 directing the Petitioner to appear for an enquiry on 2.2.2011. The Petitioner, due to his old age, was unable to appear and gave vakalat to his counsel and filed memo stating that as against the order of this Court dated 25.11.2010 in W.P. No. 23086 of 2010, a writ appeal has been filed and is in the SR stage, and requested to adjourn the hearing by two weeks. It is stated that the first Respondent has orally informed the Petitioner's counsel that next hearing date will be informed and anticipating the same he was waiting and in the meantime, the writ appeal was

numbered as W.A. No. 348 of 2011.

1.10. It is stated that, however, the first Respondent has issued another communication on 18.2.2011 stating as if the Petitioner has not appeared for the enquiry and No. communication was received from the Petitioner's counsel and directed the Petitioner to furnish the documents on or before 28.2.2011. It is stated that when the Petitioner's counsel appeared, the first Respondent was not available and therefore, the Petitioner's counsel has filed a memo seeking to defer the proceedings since the writ appeal is to be heard. However, when the writ appeal was posted for admission, since most of the papers were in vernacular language, for the purpose of translation of those documents, the writ appeal was adjourned and the same was not posted so far.

1.11. In the meantime, the first Respondent has issued another communication on 1.4.2011 directing the Petitioner to submit documents on or before 8.4.2011 and that was stated to have been received by the Petitioner on 9.4.2011 and a lawyer's notice was issued by the Petitioner on 11.4.2011 and after receiving the notice, the first Respondent has passed the impugned order approving the third Respondent as Secretary and CorRespondent of National Higher Secondary School from 1.8.2010 for a period of three years and directed the third Respondent to constitute an educational agency within a period of 15 days.

1.12. The impugned order is challenged by the Petitioner on various grounds, including:

- i. that the same has been passed without application of mind;
- ii. that when there is a dispute in the management, it is the duty of the competent authority to refer the dispute to the Civil Court for a decision u/s 53A of the Tamil Nadu Recognised Private Schools (Regulation) Act;
- iii. that when earlier this Court in W.P. No. 23086 of 2010 has set aside the proceedings of the first Respondent and directed to conduct enquiry, the first Respondent ought to have conducted enquiry in a proper manner and in spite of the filing of the appeal, which is pending, and the request made by the Petitioner's counsel, the impugned order has been passed ignoring the same;
- iv. that there is already a dispute in I.A. No. 34 of 2001 in O.S. No. 22 of 1924 in the Scheme Court to decide as to who is the eldest male member among Respondents 3 and 4 and unless and until that dispute is resolved, it is not open to the first Respondent to pass such order and in any event, the first Respondent ought to have invoked Section 53A(2) of the Tamil Nadu Recognised Private Schools (Regulation) Act to appoint an officer to look after the management of the school;
- v. that the first Respondent, being an authority under the statute expected to exercise quasi-judicial functions, has been swayed by the extraneous pressures extended by the third Respondent; and (vi) that when the entire issue is relating to

the scheme, it is not open to the first Respondent to exercise his equity jurisdiction by showing favour to the third Respondent.

2.1. In the counter affidavit filed by the third Respondent, it is stated that Thanneerkunnam Udayar family, which consisted of philanthropic individuals, wanted to provide good quality education to common man and was holding 4800 Acres of land situated in eight fertile villages of Kumbakonam, Mannarkudi, Thiruvarur Taluk, then comprised in Thanjavur District. It is stated that initially the school was started in the house of Thanneerkunnam Udayar family, popularly known as Udayar Bungalow, with five teachers and their remuneration was paid by the family. The Petitioner, being one of the teachers appointed initially, became closer to the Karta of the Thaneerkunnam Udayar family, and at that time, the founder was T.S.Singaravelu Udayar.

2.2. It is stated that the Petitioner has requested shelter for permanent livelihood and also to make a provision to manage the school and the Karta of the family has entrusted the Petitioner with the management believing that he will be loyal to the Udayar family and of course, initially, the Petitioner was loyal and as such, 50% of the management was given to the Petitioner by the Karta of the Udayar family and both the families were close, which prevailed till the demise of T.S.Singaravelu Udayar.

2.3. After the demise of the Kartha - T.S.Singaravelu Udayar, his son - T.S.Swaminatha Udayar started looking after the affairs of the school by taking part in the management actively. Irked by the same, the Petitioner has instigated one of the five branches of the Thaneerkunnam Udayar family to act against the interest of T.S.Swaminatha Udayar. With the result, one of the branches of the Udayar family filed an application in the scheme suit in O.S. No. 22 of 1924 on the file of the Principal Sub Court, Kumbakonam. It is stated that the Petitioner's family has never contributed any amount by way of investment in respect of the school and the 50% of the share was obtained only by the goodwill and lovable bond from the Thaneerkunnam Udayar family and according to the third Respondent, the Petitioner has started dominating the management of the school by dividing the family of Udayar.

2.4. It is stated that T.B.Singaravelu Udayar, who has sold his share on 11.7.1952, was instigated to filed I.A. No. 34 of 2001 before the Scheme Court challenging the sale executed by him in the year 1952 in favour of T.S.Swaminatha Udayar, after lapse of 50 years. When the other three family members of Udayar family attempted to sell away their shares to outsiders, as it was done by Gopalasamy Udayar, who has sold his share to Iyer family, it is stated that the son of the Karta - T.S.Swaminatha Udayar, namely the third Respondent has purchased the rights from the remaining three branches in the year 1952 and, therefore, T.S.Swaminatha Udayar family was the only family entitled to represent the entire Tannerkunnam Udayar family branches.

2.5. It is stated that the Petitioner is attempting to usurp and grab the administration of the school against the compromise. It is stated that as per the scheme, which has been modified in C.R.P. No. 152 of 1988 by consent, each of the families are to manage the school for three years. The Petitioner's family served as Secretary and CorRespondent uninterruptedly from 1919 to 1952. As per the scheme, in respect of the Udayar family, share has been given to each of the families, viz., Ramabadra Udayar had two years, Gopalasamy Udayar had two years and eight months, Balagurusamy Udayar had one year and four months, T.S.Swaminatha Udayar had two years and eight months, and Balakrishna Udayar had one year and four months. Gopalasamy Udayar transferred his share in favour Iyer family and the remaining three families, viz., Ramabadra Udayar, Balagurusamy Udayar and Balakrishna Udayar, have jointly sold the rights to T.S.Swaminatha Udayar family in the year 1952 under sale deeds and thereafter Iyer family and T.S.Swaminatha Udayar were administering the school.

2.6. It is stated that from 1998 to 2001, one Srinivasan, representing the Iyer family, managed the school. When he was to lay down his office in 2001 after his tenure of three years, he instigated the sons of Balagurusamy Udayar, viz., T.B.Singaravelu Udayar and T.B.Ramanathan Udayar (fourth Respondent herein) to file application in I.A. No. 34 of 2001 for modification of the scheme decree to the effect that they are also entitled to represent Udayar family, virtually challenging the sale deed executed in the year 1952. Citing the pendency of the application as if there was a dispute, the said Srinivasan has got order for his continuation as Secretary from 16.10.2001 to 15.10.2004, for a period of three years.

2.7. The third Respondent sent a representation to the first Respondent challenging the above said order and ultimately, the first Respondent passed an order in 2006 in favour of the third Respondent and challenging the same, the Petitioner and the fourth Respondent have jointly filed a writ petition and the order passed by the first Respondent, since it was passed without notice, was set aside and remanded. On the basis of the order of the first Respondent dated 9.5.2006, the third Respondent has assumed office and is administering the school. However, the Iyer family was able to manage and administer the school between 16.10.1998 and 22.11.2005 for about seven years. The first Respondent has passed order on 1.8.2007 directing the third Respondent to administer the school for three years and that was challenged by way of writ petition on the ground that rotation has not been properly followed and the writ petition was heard and orders were reserved and are yet to be delivered.

2.8. It is stated that in the meantime the tenure of the third Respondent came to an end on 31.7.2010 and therefore, he made a representation that he is entitled to the next turn from 2010 to 2013, mainly on the ground that Iyer family has been in office continuously for seven years from 1998 to 2005 and that is against the order in C.R.P. No. 152 of 1988 and it was in those circumstances, the first Respondent,

agreeing with the said contention, has passed the impugned order, which, according to the third Respondent, is neither unlawful nor opposed to the scheme.

2.9. It is also stated that the provisions of Section 53 or 53A of the Tamil Nadu Recognised Private Schools (Regulation) Act are not applicable, since the scheme has already been settled and the parties are expected to act only as per the scheme.

3. In the counter affidavit filed by the fourth Respondent, who has supported the case of the writ Petitioner, it is stated that the fourth Respondent was not a party to the sale in the year 1952 and there was No. bar for him to prosecute the application before the Scheme Court and unless and until the Scheme Court disposes of the application, the third Respondent cannot be permitted to continue in office.

4. As per the original scheme decree passed by the Sub Court, Kumbakonam, which is in the form of a final decree, passed in I.A. No. 695 of 1930 in O.S. No. 22 of 1924, a broad scheme was framed regarding the administration and management of the National High School, Mannargudi. After referring to the order of the High Court, the final decree stated as follows:

34. Point No. 1. Point No. 1 relates to the properties and management of the National High School, Mannargudi. This Court has in its judgement dated 25th October, 1924 found that Ramadurai Iyer and the Plaintiff's family are entitled each to a half share in the properties of the National High School, Mannargudi and in the right of management thereof (see the finding on the 7th issue). There is No. dispute about the correctness of this finding. It is also left undisturbed by the High Court in its judgement on appeal.

5. The equal right of both the families, viz. Udayar family and Iyer family, was given once in ten years. The ten years period left to Udayar family had to be shared among the five branches of Udayar family - T.S.Swaminatha Udayar, Gopalasamy Udayar, Ramabathira Udayar, Balagurusamy Udayar and Balakrishna Udayar. When a dispute arose in an interlocutory application from the order of the Sub Court, Kumbakonam and the matter was taken to this Court by the Petitioner by filing C.R.P. No. 152 of 1988, by which time the Udayar family was represented by T.S.Swaminatha Udayar, a memorandum of compromise was entered by modifying the scheme, with a direction to refer it to the Sub Court, Kumbakonam and this Court has issued a direction to the Scheme Court to amend the earlier scheme, stated above, in terms of the compromise.

6. As per Clause (4) of the memorandum of compromise, which was recorded, T.S.Swaminatha Udayar has assumed office on 1.8.1987 and that will be for a period of three years to be computed from that date and therefore, in effect, by virtue of the order in the civil revision petition, by way of a modification given to the scheme in a compromise between the two families, viz., Iyer family and Udayar family, one headed by the Petitioner and other by T.S.Swaminatha Udayar, each family was given three years time. It is also stated that the eldest male member of the

Tanneerkunnam Udayar family shall be entitled to be in the Board. The parties have also agreed that the share in the properties of the National High School, Mannargudi by the Iyer family and Udayar family shall be in the ratio of 19/30 and 11/30 respectively. The operative portion of the memorandum of compromise forming part of the scheme decree is as follows:

Memo of Compromise

The parties to the above C.R.P. agree as follows:

1. The Board of Management of the National High School, Mannargudi shall be equally represented from the family of late S.Ramadurai Iyer and from the family of Thanneerkunnam Odayar, each family being represented by one member.
2. The eldest male member of the Thanneerkunnam Odayar family shall be the member of the Board. If he is unwilling or incapacitated from acting, the next in line shall become the member of the Board of the National High School representing the Thanneerkunnam Odayar family.
3. Three members are to be co-opted to the Board of Management of the National High School, Mannargudi. Out of the 3 persons, one person each shall be nominated by Ramadurai Iyer's family and Thanneerkunnam Odayar respectively. The 3rd member shall be nominated by consent of the members. If there is No. consent, then the 3rd members shall be appointed by the Court.
4. The member belonging to the family of Ramadurai Iyer's family and Thanneerkunnam Odayar in the Board of Management of the National High School, Mannargudi shall hold office as Secretary and Correspondent alternatively by rotation for a period of 3 years each.
5. The parties hereby confirm that the shares held by Ramadurai Iyer family and Thanneerkunnam family in the properties of the National High School, Mannargudi are in the ratio of 19/30 and 11/30 respectively.
6. The parties agree that the aforesaid clauses shall be incorporated in the scheme decree by filing an application in the scheme court for amendment of the scheme decree. Dated at Madras this the 29th day of April, 1988."
7. After the modified scheme, which was passed as per the order of this Court dated 7.7.1988, based on which the term of office for two families was on rotation for three years each, T.S.Swaminatha Udayar assumed office on 1.8.1987 for a period of three years, being the eldest male member of the Udayar family consisting of five branches, viz. T.S.Swaminatha Udayar, Gopalasamy Udayar, Ramabathira Udayar, Balagurusamy Udayar and Balakrishna Udayar, and his turn completed in the year 1991.
8. One branch of the Udayar family headed by Gopalasamy Udayar has already sold his share during his life time to the Iyer family in the year 1952. Likewise, in the year

1952, the other three families, viz., Ramabathira Udayar, Balagurusamy Udayar and Balakrishna Udayar, have also sold their shares to T.S.Swaminatha Udayar. However, in the said sale, the fourth Respondent, who is the son of Balagurusamy Udayar, was not a party.

9. After the period of T.S.Swaminatha Udayar has ended in 1991, from 1992 to 1995 the Petitioner V.Ramadurai has managed the school. Thereafter, the subsequent three years, viz., 1995-1998 were managed by T.S.Swaminatha Udayar again. The next period due as per the compromise decree, viz., 1998 to 2001 had to go to Iyer family and it is not in dispute that in 1998, V.Srinivasan, the eldest male member of Iyer family, started functioning as Secretary and CorRespondent and he has continued up to 2001.

10. In the meantime, in 1999, T.S.Swaminatha Udayar, being the eldest male member of the Udayar family, had passed away. It is stated that it was at that time, the sons of Balagurusamy Udayar, viz., T.B.Singaravelu Udayar and T.B.Ramanathan Udayar (who is also the fourth Respondent in the writ petition), have jointly filed I.A. No. 34 of 2001 in O.S. No. 22 of 1924 in the Scheme Court against V.Srinivasan Iyer, T.S.Balagurusamy Udayar (born through the first wife of T.S.Swaminatha Udayar), T.S.Rajagopalan (third Respondent herein) and T.S.Sridhar, who are stated to be the children born through the second wife of T.S.Swaminatha Udayar, claiming that they are the eldest male members of Tanneerkunnam Udayar family entitled to succeed to the management of the National High School, Mannargudi and also stating that T.S.Swaminatha Udayar married Mrs. Sundaram and during her life time he married the mother of the third Respondent and T.S.Sridhar and therefore, the marriage is a bigamous marriage and, therefore, the same is void under the Tamil Nadu Hindu Bigamy Prevention and Divorce Act, 1949, in effect stating that the third Respondent is an illegitimate son of T.S.Swaminatha Udayar not entitled to inherit, incidentally also stating that the sale effected by the other three branches in favour of T.S.Swaminatha Udayar was for an amount of Rs. 1,000/-, which is an inadequate consideration and therefore, such sale is in effect not valid and accordingly, the Petitioners in the interlocutory application wanted a suitable modification in the scheme, which application is still pending before the Scheme Court.

11. It was due to the pendency of the said application before the Scheme Court, it appears that in spite of the expiry of the period of Iyer family on 15.10.2001, V.Srinivasan Iyer was permitted by the educational authorities to continue to manage for further three years from 16.10.2001 to 15.10.2004 and accordingly, the Iyer family has continued for further period. Thereafter, when the usual term for Iyer family has come again on 16.10.2004, the Iyer family continued to administer and manage from 16.10.2004, which was going on up to 22.11.2005, on which date V.Srinivasan died and his brother, viz., the present Petitioner, succeeded as Secretary from 22.11.2005. It is seen that the educational authorities have ordered direct payment of salary to the teachers on 28.12.2005.

12. The claim made by the fourth Respondent for administration of the school was rejected by the first Respondent by order dated 9.5.2006 on the ground that in the same family, probably referring to the third Respondent, some other person is claiming right and an application is pending before the Scheme Court and therefore, it is not known as to who should represent from the Udayar family. It was thereafter, by an order dated 29.5.2006, the first Respondent, on receiving representation from the third Respondent, has permitted the third Respondent to act as a Secretary and CorRespondent and the third Respondent has accordingly taken charge.

13. The said orders of the first Respondent dated 9.5.2006 and 29.5.2006 were challenged by the Petitioner herein as well as the fourth Respondent in a batch of writ petitions in W.P. No. 17974 of 2006, etc. batch and this Court, by an order dated 29.1.2007, has set aside both the orders and remanded the matter to the first Respondent for a fresh decision, with the operative portion of the order as follows:

24. One of the main contentions raised on behalf of the Petitioners in the writ petitions is that the first Respondent had passed the impugned orders without giving sufficient opportunity to the Petitioners to represent their case. Contentions have been raised before this Court stating that final and binding decisions could be made only after the issues pending before the competent Civil Court are decided and any alteration or modification in the period allotted to each of the families could be done only if the scheme decree framed in O.S. No. 22 of 1924, on the file of the Sub-ordinate Court, Kumbakonam, and the compromise order passed by this Court in C.R.P. No. 152 of 1988, are correspondingly altered or modified. However, at this stage, instead of going into the complex details of the case pending before the Civil Court, this Court finds it to be sufficient to set aside both the impugned orders of the first Respondent Na.Ka. No. 103767/W11/1998, dated 09.05.2006 and Na.Ka. No. 103767/W11/1998, dated 29.05.2006 and to direct the first Respondent to decide the issues afresh after hearing all the parties concerned. Hence, the impugned orders of the first Respondent, dated 9.5.2006 and 29.5.2006, are set aside and the first Respondent is directed to hear all the concerned parties involved in the dispute and to decide the matter afresh, after giving them adequate opportunity of representation, and pass appropriate orders, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. However, it is made clear that the day to day administration and management of the National Higher Secondary School, Mannargudi, will be with the fourth Respondent, namely, T.S.Rajagopalan without the power to take substantial and important policy decisions relating to the administration and management of the School, including matters pertaining to initiation of disciplinary proceedings, without obtaining the prior approval of the authorities concerned.

However, directing that the third Respondent shall be entitled to administer and manage the school without taking any policy decision and accordingly, the third

Respondent continued the administration in spite of the fact that the orders passed by the first Respondent were set aside.

14. Again, the first Respondent, as per the direction of this Court, has conducted enquiry and taking note of the fact that the other three branches of Udayar family have already sold away their shares in 1952 itself under registered documents, has passed an order on 1.8.2007 recognising the third Respondent as educational agency. It is against the said order, the Petitioner and the fourth Respondent have filed writ petitions in W.P. Nos. 34739 and 34740 of 2007 and another writ petition in W.P. No. 33169 of 2007 challenging another order of the first Respondent dated 22.8.2007 and in these writ petitions, there was an interim direction given by this Court that the third Respondent shall continue to be in administration of the school, but cannot make appointment to the post of Headmaster and it is stated that the writ petitions were all heard and orders were reserved on 20.11.2009 and orders are not yet passed.

15. It is also stated that in the meantime the Petitioner has approached the Sub Court, Mannargudi by filing a suit in O.S. No. 40 of 2009 for declaration and permanent injunction and in I.A. No. 49 of 2009 filed by him, the Sub Court has granted an order of injunction on 10.6.2009 against the third Respondent, against which the third Respondent has filed an appeal in C.M.A. No. 5 of 2010 and in I.A. No. 5 of 2010 filed in the said appeal, the Principal District Judge, Thiruvavur has granted interim stay of the order passed in I.A. No. 49 of 2009 in O.S. No. 40 of 2009 and therefore, the third Respondent continues to be in administration of the school.

16. It is stated that, in the meantime, by an order dated 29.7.2010, the first Respondent has again recognised the third Respondent as the Secretary and CorRespondent for the period from 1.8.2010 to 31.7.2013 and that order came to be set aside by this Court by order dated 25.11.2010 in W.P. No. 23086 of 2010 filed by the Petitioner, only on the ground that the said order has been passed without giving opportunity to the parties, especially the Petitioner, and remanded the matter to the first Respondent for passing fresh orders, directing that till fresh orders are passed, status-quo in respect of the administration shall continue. With the result, the third Respondent was directed to continue to be in administration on equitable principles.

17. It was after such order passed by this Court, enquiry notice was issued by the first Respondent and the counsel appearing for the Petitioner is stated to have filed a memo asking for adjournment of enquiry on the ground that as against the portion of the order of this Court directing status-quo to be maintained by allowing the third Respondent to continue to be the administrator, the writ appeal is pending. It was in those circumstances, after giving notice for two times, the first Respondent has passed the impugned order taking note of the fact that V.Srinivasan has administered the school for seven years and applying the principles of equity, the third Respondent should be directed to continue the administration of the

institution from 1.8.2010 for a period of three years.

18. On the entire factual matrix of this case, there are three issues which are yet to be resolved, which are vital to decide the issue involved in this case and which alone can enable the educational authorities to pass orders. They are:

i. The order to be delivered in W.P. Nos. 34739, 34740 and 33169 of 2007, wherein the order passed by the first Respondent permitting the third Respondent to continue to administer the school for the period from 1.8.2007 for three years is under challenge. of course, it has to be taken note of that the three years period prescribed in the impugned order challenged in those writ petitions has, in effect, expired in the year 2010. In effect, any order that may be passed in the said writ petitions may not have any implication in the present scenario.

ii. The writ appeal in W.A. No. 348 of 2011 is stated to have been filed by the Petitioner against the portion of the order passed by this Court in W.P. No. 23086 of 2011, dated 25.11.2010 remanding the matter without expressing any opinion on the merits of the matter to the first Respondent for enquiry, setting aside the order of the first Respondent dated 29.7.2010, by which the first Respondent has permitted the third Respondent to continue in office from 1.8.2010 for a period of three years, and directing the status-quo to be maintained, thereby permitting the third Respondent to continue till final orders are passed by the first Respondent. of course, it may be stated that the writ appeal has become infructuous because of the impugned order passed by the first Respondent now which is challenged in this writ petition.

iii. The only other issue, which is relevant for the purpose of the educational authorities to decide, is about the application filed by the fourth Respondent in the Scheme Court in I.A. No. 34 of 2001 in O.S. No. 22 of 1924, which is for the purpose of deciding as to who in the family of Udayar as per the scheme, especially after the demise of T.S.Swaminatha Udayar and T.B.Singaravelu Udayar, who represented the said family for administering the school during their turn of three years, can administer the school. A specific issue has been raised by the parties that the third Respondent and T.S.Sridhar are the illegitimate children of T.S.Swaminatha Udayar, as during the life time of his first wife, he has married the mother of the third Respondent and T.S.Sridhar. On the other hand, it is the point of the third Respondent that the father of the fourth Respondent has given up his right in respect of administration of the property as early as in the year 1952, which has never been challenged by anyone, including the fourth Respondent and therefore, the fourth Respondent has No. locus standi to file an application before the Scheme Court after nearly 50 years.

The above vital issues have to be considered for the purpose of deciding as to who can represent the family of Udayar, whose family is admittedly one of the founders of the school.

19. In addition to that, I am of the considered view that as to whether the period of turn (three years each) as per the decree settled by compromise in civil revision petition, elicited above, has been properly enjoyed by the two families is also to be decided by the Scheme Court, especially in the circumstance that there have been lot of discrepancies. On the one hand, after the period of Iyer family has expired on 15.10.2001, the educational authorities have directed the Iyer family to continue for another turn of three years on the basis of the pendency of I.A. No. 34 of 2001 in O.S. No. 22 of 1924 and that has never been challenged by the third Respondent and after that period, from 2004, the Iyer family continued for one year and on 28.12.2005, direct payment of salaries was ordered and thereafter, the third Respondent continues from 2006 till date, which is admittedly more than three years. Whether equity to be worked out or not is for the Scheme Court to decide on the factual matrix and not for the educational authorities, which is not within their purview.

20. While Iyer family have administered for an additional period of three years from 15.10.2001 to 15.10.2004 and also from 15.10.2004 to 22.11.2005, the Udayar family, through the third Respondent, is administering the school from 29.5.2006 till date, which is nearly five years. I am of the considered view that it is the Scheme Court which has to decide and work out the equity in the appropriate manner taking note of the complex situation which is in existence.

21. In such view of the matter, the impugned order of the first Respondent by permitting the third Respondent to continue on equity principles cannot be sustained. At the same time, this Court should take note of the fact that even on the side of the Petitioner there has been enjoyment over and above the period expected under the consent decree passed in the civil revision petition. This Court is conscious of the fact that by remanding the matter once again to the educational authorities No. useful purpose will be served. At the same time, it is not proper for this Court exercising the jurisdiction under Article 226 of the Constitution of India, while deciding about the validity or otherwise of the order of the first Respondent, to substitute its view, especially when the remedy is available in the Scheme Court.

22. For the foregoing reasons, the impugned order passed by the first Respondent stands set aside. The Scheme Court, viz., the SubCourt, Mannargudi, is directed to take up the application in I.A. No. 34 of 2001 in O.S. No. 22 of 1924, along with the scheme decree as modified by consent in C.R.P. No. 152 of 1988 and pass appropriate orders in the interlocutory application. The Scheme Court is also directed to work out equity taking note of the consent decree between the parties by giving opportunity to both the parties and such order shall be passed by the Scheme Court within a period of six months from the date of receipt of a copy of this order. Till such orders are passed by the Scheme Court, the first Respondent is directed to pass appropriate orders as per the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act enforcing the direct payment of salaries

to the teachers, since admittedly the school in respect of which the administration is in dispute is an aided private school. It is also made clear that till such orders are passed by the Scheme Court, the first Respondent shall be in-charge of administration of the school without taking any policy decision which may affect the very basis of the decree, since basically the institution is run by concerted action of both the parties.

This writ petition is ordered accordingly. No. costs. Consequently, M.P. No. 1 of 2011 is closed.